



## **EMPLOYMENT TRIBUNALS**

**Claimant: Mrs. M. Mwarowa**

**Respondent: Durham County Council**

**Heard at: Newcastle upon Tyne Employment Tribunal**

**On 03 to 06 March 2025.**

**Before: Employment Judge T.R. Smith.**

**Mrs. C. Brayson**

**Mr. S. Moules**

### **Representation**

**Claimant: In person.**

**Respondent: Ms. B. Clayton (counsel)**

## **JUDGMENT**

1.The claimant's complaint of direct discrimination is not well-founded and is dismissed.

2.The claimant's complaint of harassment is not well-founded and is dismissed.

## **WRITTEN REASONS SUPPLIED PURSUANT TO A REQUEST DATED 13 MARCH 2025**

### **Abbreviations used in this judgement**

### **Key personalities.**

Ms X. A Zimbabwean woman engaged in child care proceedings brought by the respondent.

Ms J. Levie, service manager, Ms Levie managed Ms Cheesman, amongst others.

Ms R. Cheesman, team manager and Ms Delaney's manager

Ms A. Delaney, the claimant's supervisor.

### **The agreed issues**

The parties adopted the issues set out by Employment Judge Aspden in her order of 09 September 2023.

### **Complaint 1**

**1.Did Jo Levie require the claimant to attend a meeting on 28 March 2023 to discuss Facebook posts she had made before her employment began?**

If so:

Whether harassment

2. By doing that did the respondent engage in unwanted conduct related to:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

(c) the claimant's religious or other philosophical beliefs about the role or position of women in society?

If so:

3. Did that conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

4. Did that conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

In deciding this issue the tribunal will determine whether it was reasonable for the conduct to have this effect.

Whether direct discrimination

5. By doing that did the respondent:

5.1 subject the claimant to a detriment; and

5.2 treat the claimant less favourably because of:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

(c) the claimant's religious or philosophical beliefs about the role or position of women in society than the respondent would have treated others, in circumstances that were not materially different?

## **Complaint 2**

**6. Did Jo Levie require the claimant to attend the meeting on 28 March 2023 without first giving her time to arrange representation?**

If so:

Whether harassment

7. By doing that did the respondent engage in unwanted conduct related to:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

c) the claimant's religious or other philosophical beliefs about the role or position of women in society?

If so:

8. Did that conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

9. Did that conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? In deciding this issue the Tribunal will determine whether it was reasonable for the conduct to have this effect.

Whether direct discrimination

10. By doing that did the respondent:

10.1 subject the claimant to a detriment; and

10.2 treat the claimant less favourably because of:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

(c) the claimant's religious or philosophical beliefs about the role or position of women in society than the respondent would have treated others, in circumstances that were not materially different?

### **Complaint 3**

**11. Did Jo Levie require the claimant to attend the meeting on 28 March 2023 without first giving her access to workplace policies and particulars of her employment?**

If so: Whether harassment

12. By doing that did the respondent engage in unwanted conduct related to:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

(c) the claimant's religious or other philosophical beliefs about the role or position of women in society?

If so:

13. Did that conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

14. Did that conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? In deciding this issue the Tribunal will determine whether it was reasonable for the conduct to have this effect.

Whether direct discrimination

15. By doing that did the respondent:

15.1 subject the claimant to a detriment; and

15.2 treat the claimant less favourably because of:

a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

(c) the claimant's religious or philosophical beliefs about the role or position of women in society than the respondent would have treated others, in circumstances that were not materially different?

## **Complaint 4**

**16. At the meeting on 28 March 2023 and/or subsequent meetings that took place on 31 March and 19 April 2023 did the respondent criticise posts the claimant had made on social media?**

If so:

Whether harassment

17. By doing that did the respondent engage in unwanted conduct related to:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or (

c) the claimant's religious or other philosophical beliefs about the role or position of women in society?

If so: 1

18. Did that conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? 1

19. Did that conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? In deciding this issue the Tribunal will determine whether it was reasonable for the conduct to have this effect.

Whether direct discrimination

20. By doing that did the respondent:

20.1 subject the claimant to a detriment; and

20.2 treat the claimant less favourably because of:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

(c) the claimant's religious or philosophical beliefs about the role or position of women in society than the respondent would have treated others, in circumstances that were not materially different?

## **Complaint 5**

**21. At the meeting on 28 March 2023 and/or subsequent meetings that took place on 31 March and 19 April 2023 did the respondent fail to give the claimant a fair opportunity to respond to those criticisms?**

If so:

Whether harassment

22. By doing that did the respondent engage in unwanted conduct related to:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

(c) the claimant's religious or other philosophical beliefs about the role or position of women in society?

If so:

23. Did that conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

24. Did that conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? In deciding this issue the Tribunal will determine whether it was reasonable for the conduct to have this effect.

Whether direct discrimination

25. By doing that did the respondent:

25.1 subject the claimant to a detriment; and

25.2 treat the claimant less favourably because of:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

(c) the claimant's religious or philosophical beliefs about the role or position of women in society than the respondent would have treated others, in circumstances that were not materially different?

## **Complaint 6**

**26. Did Ms Levie go onto the claimant's social media without her consent and print off messages the claimant had posted? If so:**

Whether harassment

27. By doing that did the respondent engage in unwanted conduct related to:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

(c) the claimant's religious or other philosophical beliefs about the role or position of women in society?

If so:

28. Did that conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

29. Did that conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? In deciding this issue the Tribunal will determine whether it was reasonable for the conduct to have this effect.

Whether direct discrimination

30. By doing that did the respondent:

30.1 subject the claimant to a detriment; and

30.2 treat the claimant less favourably because of:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

(c) the claimant's religious or philosophical beliefs about the role or position of women in society than the respondent would have treated others, in circumstances that were not materially different?

## **Complaint 7**

**31. Did Ms Levie instruct the claimant to close down her social media at the meeting on 28 March 2023 and by email after that meeting?**

If so:

Whether harassment

32. By doing that did the respondent engage in unwanted conduct related to:



- (a) sex;
- (b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or (
- c) the claimant's religious or other philosophical beliefs about the role or position of women in society?

If so:

33. Did that conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

34. Did that conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? In deciding this issue the Tribunal will determine whether it was reasonable for the conduct to have this effect.

Whether direct discrimination

35. By doing that did the respondent:

35.1 subject the claimant to a detriment; and

35.2 treat the claimant less favourably because of:

- (a) sex;
- (b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or (
- c) the claimant's religious or philosophical beliefs about the role or position of women in society than the respondent would have treated others, in circumstances that were not materially different?

## **Complaint 8**

**36. Did the respondent fail to involve HR when the claimant raised a grievance?**

If so:

Whether harassment

37. By doing that did the respondent engage in unwanted conduct related to:

- (a) sex;
- (b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or
- (c) the claimant's religious or other philosophical beliefs about the role or position of women in society?

If so:

38. Did that conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

39. Did that conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? In deciding this issue the Tribunal will determine whether it was reasonable for the conduct to have this effect.

Whether direct discrimination

40. By doing that did the respondent:

40.1 subject the claimant to a detriment; and

40.2 treat the claimant less favourably because of:

- (a) sex;
- (b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or
- (c) the claimant's religious or philosophical beliefs about the role or position of women in society than the respondent would have treated others, in circumstances that were not materially different?

## **Complaint 9**

**41. Did the claimant's manager turn down her grievance? If so:**

Whether harassment

42. By doing that did the respondent engage in unwanted conduct related to:

- (a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or (

c) the claimant's religious or other philosophical beliefs about the role or position of women in society?

If so:

43. Did that conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

44. Did that conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? In deciding this issue the Tribunal will determine whether it was reasonable for the conduct to have this effect.

Whether direct discrimination

45. By doing that did the respondent:

45.1 subject the claimant to a detriment; and

45.2 treat the claimant less favourably because of:

(a) sex;

(b) the claimant's colour and/or her Zimbabwean nationality or national origins and/or that of an individual about whom she posted messages; and/or

(c) the claimant's religious or philosophical beliefs about the role or position of women in society than the respondent would have treated others, in circumstances that were not materially different?

## **Complaint 10**

### **Whether (constructively) dismissed**

**46. Did the respondent commit a repudiatory breach of the claimant's contract of employment by doing the things referred to in complaints 1 to 9 above?**

If so:

47. Did the claimant resign in response?

48. Did the claimant do so without having affirmed the contract?

Whether harassment

49. Did any of the things referred to in complaints 1 to 9 constitute harassment?

If so,

50. Was the overall repudiatory breach sufficiently influenced by the acts of harassment so as to render the (constructive) dismissal unwanted conduct related to a relevant protected characteristic?

51. Did the (constructive) dismissal have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

52. Did the (constructive) dismissal have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? In deciding this issue the Tribunal will determine whether it was reasonable for the conduct to have this effect.

Whether direct discrimination

53. Did any of the things referred to in complaints 1 to 9 constitute direct discrimination?

If so:

54. Did the acts of discrimination sufficiently influence the overall repudiatory breach so as to render the constructive dismissal discriminatory?

55. An issue arose in respect of complaint 10 as to whether it was pleaded. The tribunal found it had not been, but the proposed amended wording was set out in the order of Employment Judge Aspden. After a short adjournment for Ms Clayton to take instructions she indicated the respondent did not object to the proposed amendment.

56. It was agreed that the tribunal would decide liability only and remedy, if necessary, would be addressed on a separate date.

57. The tribunal should record that whilst the claimant's claims were out of time, by a judgement of Employment Judge Legard, sitting on 14 May 2024, time had been extended on the just and equitable principle.

## **Evidence**

### **The bundle**

58.The tribunal had before it a bundle which consisted of 447 pages.

59.At the start of the hearing the claimant sought to introduce a new unpaginated large lever arch file.

60.The tribunal reviewed the file. Much of the documentation was only relevant to remedy, or was a duplicate of what was already in the main bundle, or was irrelevant to the agreed issues. However there was one document, a post, that was potentially relevant and the tribunal admitted it, for the oral reasons it gave, and marked it as page 448.

61.A reference in this judgement to a page number is a reference to the bundle. The tribunal should add that it has quoted extensively from the claimant's various messages. The apparent mistakes in the language are not a fault of the tribunal. They have been reproduced verbatim.

62.The parties were reminded to take the tribunal to any specific documents relied upon during the course of their respective evidence.

### **Statements.**

63.The tribunal was provided with the following witness statements.

### **For the claimant**

- A statement of the claimant dated 25 April 2024.
- A statement of the claimant dated 28 April 2023 ( which was in bundle at pages 134/135).
- A statement of Mr S. Mwarowa, the claimant's husband, dated 08 October 2024.

64.Ms Clayton agreed that, given the concession that Mr. Mwarowa had not attended any meetings with the respondent, his statement could be taken as read for the purposes of the liability hearing.

65.When statements were ordered the tribunal made it clear (80) that a statement had to contain everything that was relevant to the dispute. 66.The claimant's

statement was scant in the extreme and the only reference to the issues was found in paragraph 3. Looking at that paragraph, even on a generous interpretation it only addressed two complaints. The tribunal, having regard to the overriding objective determined, having raised the matter with Ms Clayton, that the information set out the claimant's claim form should also be treated as part of her evidence in chief. Even with that concession there remained before the tribunal a lack of direct evidence from the claimant in respect of much of the complaints identified above.

### **For the respondent**

- A statement of Ms N. Metcalfe dated 5 November 2024.
- A statement of Ms A. Delaney dated 15 November 2024.
- A statement of Mr B. Newby dated 14 November 2024.
- A statement of Ms J. Dawson dated 08 November 2024.
- A statement of Ms J. Levie dated 12 November 2024.
- A statement of Ms R. Cheesman dated 09 October 2024.

### **Findings of fact**

67. The tribunal has only made findings on those matters necessary to determine the agreed issues and has not addressed each and every factual dispute.

### **Background**

68. The claimant is of the Christian faith.

69. She is a black woman of Zimbabwean heritage.

70. Ms X is also a black woman of Zimbabwean heritage.

71. The claimant explained her philosophical belief as related to the role or position of women in society and in particular the oppression they suffer from men. She believed in the Shona culture of Hunhu/Ubuntu philosophy as a way of conducting her life. It was characterised with caring for others in times of trouble and tribulation, regardless of any blood relationship. It also taught that people could be related by a totem which in her case was a heart which meant she was loving and caring and that totem shaped her life. The claimant was not challenged on her belief.

72. She explained she started a You-tube channel "Molly's talk" following covid 19 to help black people with domestic problems.

73. In the claimant's previous employment she had been a shop steward for Unison. Thus she had some knowledge of industrial practice and procedure in the workplace.

### **The respondent's policies**

74. Relevant to these proceedings was the respondent's social media policy (366/373) and its grievance policy, known as a resolution policy (429/435).

### **The social media policy.**

75. The policy emphasised that everything posted or received on a social media site was public property and when published online, control of it was lost. The policy emphasised the importance of privacy settings.

76. Employees were urged to think carefully about posting information which contained their personal image and the contents of any posting and how it might reflect upon the image of the respondent.

77. Employees were urged to think carefully that even if they did not intentionally identify themselves as working for the respondent they needed to consider whether what was posted could be linked to the respondent.

78. The policy gave examples of inappropriate personal use of social media including expressing any comments which could be judged as being negative regarding the respondent or its employees, the dangers of creating a conflict between employment with the respondent and the employee's personal interests and commenting upon any current dispute.

79. Even on the claimant's evidence, even if she did not access it via the respondent's portal on 28 March 2023, she agreed she was given a copy on 01 April 2023.

### **The grievance policy**

80. The respondent's grievance policy followed the common industrial practice of providing an informal discussion between the employee and the relevant manager. If that was not successful there was then the option of an informal resolution meeting.

81. Only once the above stages had been completed would a formal process be followed which required the employee to complete a form which in turn would trigger a grievance investigation.

82. Before leaving the issue of policies the tribunal should comment that the respondent had no policy that gave an employee a right to be represented by a trade union official at an informal meeting. However the advice from the respondent's HR department to managers was that they had a discretion to permit representation, particularly if an employee needed significant support.

83. The claimant was able to access the grievance policy via the respondent's portal from 28 March 2023.

### **The employment relationship**

84. The claimant commenced employment with the respondent as a family worker on 27 March 2023.

85. There is a shortage of staff to work within social services departments throughout the country.

86. The post involved working with both men and women and their families who had been brought to the attention of the respondent as in need of support. The work could include cases involving domestic violence.

87. Her employment ended abruptly, approximately three weeks later on 19 April 2023, although as will be seen, the claimant was at work for significantly less than those three weeks.

88. In order to commence employment the claimant utilised the respondents electronic onboarding portal to complete pre-employment checks.

89. The tribunal is satisfied that that process gave the claimant access to a statement of her particulars of employment (225/232). It was uploaded on to the respondent's reporting platform on 27 March (365) but the link informing the claimant that it had been uploaded, so she could access it, was not sent to her until 28 March.

90. The tribunal therefore rejected the claimant's assertion that she had never had the opportunity to access her particulars of employment prior to disclosure.

91. The particulars of employment made express reference to the respondents' policies and procedures and how they could be viewed on the respondent's intranet, or obtained from a line manager or from the respondent's human resources department.



## **The meetings**

### **Events leading to the first meeting on 27 March 2023**

92. On 27 March 2023 Ms Levie became aware of posts on the claimant's Facebook account, for reasons the tribunal has explain later in its judgement.

93. The claimant's account was not set to private and was accessible by any member of the public.

94. The respondent was involved in a contentious high-profile family law case involving a Ms X, proceeding in the Newcastle Family Court

95. The case revolved around the removal by the respondent of Ms X's children. The respondent believed the children of Ms X were at significant harm.

96. Ms X had posted on Facebook criticising the respondent and its social workers.

97. The claimant tagged herself onto the post on 22 March 2023 and said *"At least I try to support (tribunal emphasis) you my dear sister. Was at court waiting and I have to go now. Court guards said they went out unfortunately have to drive off (sic)"* (245)

98. The post appeared in public. The post included the claimant's full name and picture.

99. The claimant then added a second post which read

*"Women arise.*

*After you judge Ms X do you feel good enough knowing she is suffering? I don't believe in the same religion as she does. I stand by her to support with knowledge I know, (tribunal 's emphasis) if she accepts it. She respondent to me and will go see her at Newcastle Family Court today (tribunal's emphasis). As a professional (tribunal's emphasis) and mother I can imagine the pain she is going through(sic).*

*I'll you are around that place. Let's meet before 10 am (which the tribunal considered as meaning others to gather to support Ms X) I now have a community project called Family Arc services that support parents losing children. Love wins for it will not rejoice in someone's pain because we don't believe in same culture (sic)(246).*

100.The claimant's post attracted approximately 19 comments.

101.The posts were made after the claimant had received an unconditional offer of employment from the respondent but five days prior to her start date. Thus when she posted she knew she would be working for Durham County Council. She did not know, however, that Durham County Council was taking proceedings against Ms X at the time she made the posts.

102.That is not to say the tribunal did not consider it was reasonable for the respondent to subsequently raise the matter with the claimant to better understand the situation and to explain its involvement in the family court proceedings.

103.The claimant accepted in cross examination that the posts could be taken to undermine the respondent's social workers engaged in the case. She further conceded that the reference "*will go see her at Newcastle Family Court*" could be read by a person as suggesting she was supporting Ms X. However she went on to add, only by a non-Zimbabwean, who did not understand her culture. The tribunal found therefore that the claimant conceded that vast majority of people would assume the claimant was supporting Ms X.

104.Following an internal discussion involving Ms Levie, Ms Cheeseman and Ms Metcalfe it was agreed that Ms Cheeseman would arrange to speak to the claimant to discuss the above posts. Ms Levie was the decision maker.

### **The first meeting on 27 March 2023**

105.A meeting took place on 27 March 2023 , the claimant's first day of work, between the claimant and Ms Cheeseman ( the first meeting) to raise the issue of the posts.

106.It lasted about 5 minutes. It was informal meeting to better understand the position.

107.No notes were taken but Ms Cheeseman e-mailed Ms Levie and Ms Delaney that same day ( 236) and the tribunal considered the e-mail to be a reasonable and contemporaneous account of the principal matters discussed.

108.The notes showed that Ms Cheeseman asked the claimant about her Facebook posts and Ms X. The claimant said she became aware of Ms X via the Zambian

community and knew Ms X was going through a difficult time. She said she reached out to Ms X but Ms X did not want her support.

109. Ms Cheeseman explained the danger of such posts. The claimant volunteered that she would delete them. She said she helped people with relationships as a hobby.

110. The claimant did not immediately take down the posts despite her promise.

111. She gave a number of explanations for that broken promise before the tribunal.

- Firstly because she was never shown the posts by the respondents until 20 April and
- Secondly she considered if she took down the posts that might hinder any investigation.

112. The tribunal found those explanations unconvincing. Given what was explained to the claimant she must have known the posts being referred to and at no stage was she subjected to any investigation. As the respondent clearly had copies of the posts an investigation would not have been hindered.

113. Ms Cheeseman said she would feed back the outcome of the meeting to Ms Levie and that Ms Levie might want to speak to the claimant.

114. At no stage did the respondent state or even hint at any form of disciplinary investigation or process.

115. It is appropriate to interject that the tribunal did not find that any of the above posts contravened the respondent social media policy. They did not because they related to pre-employment posts upon which the policy was silent. In addition, when the claimant made her posts she did not know that the respondent was the local authority involved with Ms X.

116. On the same day, 27 March the claimant created some posts she had made entitled "*relationship skills*" which emphasised the importance of sex in a stable relationship and the way she, the claimant, perceived some women permitted themselves to have sex with men hoping for marriage which never came, leaving them heartbroken. (222/223). She described some men's intentions as starting from "*the sperm bank to sperm bin*"

117. In another post she said “*have you ever realise that **most** [ tribunal emphasise] men when approaches you (sic) you its sex motivated*”

118. In cross examination the claimant did not consider that such posts might lead men who viewed them to consider the claimant would not act impartially in her role with the respondent. The tribunal considered that objectively, a male service user allocated to the claimant who had sight of the above, could well conclude the claimant had a prejudicial view towards men.

### **The second meeting, 28 March 2023.**

119. The claimant was sent an electronic invite to a Teams meeting scheduled for 28 March 2023 ( the second meeting).

120. The claimant requested, via email, (237) an agenda and asked whether she should invite her union representative to the meeting.

121. The claimant was told she could invite her union representative (237) but it was just an informal discussion in relation to her social media posts. The claimant was asked for the name of the trade union representative and which union the representative belonged to. Thus the tribunal concluded that whilst the claimant had no entitlement to union representation the respondent was prepared to permit the same. The claimant did not bring a representative and nor did she ask for a postponement due to the none availability of a representative.

122. The tribunal did not accept the claimant’s criticism that there was no need for a second meeting. The first meeting had been extremely brief. It was simply to identify if the posts were made by the claimant.

123. Prior to the meeting, in an email dated 28 March (237/238) the claimant said that she was she was really stressed and did not know Ms X and that “*the reason I looked for her was because of community outcry over her mental well-being. She is a person I don’t even know where she lives or any issues around her issues but to just advise her that what she was doing wasn’t acceptable. She even never wanted to speak to me because my husband and I work in social services.(sic)*”

124. The meeting took place between the claimant, Ms Levie and Ms Cheeseman via Teams on 28 March 2023.

125.The respondent took notes at the meeting and a copy of those notes were found at pages 239 /240 in the bundle. The notes were not verbatim but the tribunal accepted that they were contemporaneous and a reasonable summary of the principal matters discussed.

126.The claimant was told at the very start of the meeting that it was informal and she was not in trouble. Thus although the claimant asserted to the tribunal that she considered she was subjected to some form of investigation the tribunal did not so find.

127.The respondent explained that it wanted to discuss its expectations following a number of comments posted by the claimant which appeared supportive of Ms X.

128.On balance the tribunal found that Ms Levie read out the posts to the claimant.

129.It was explained to the claimant that as she was now working for the respondent the posts could be seen as speaking out against the respondent and the social workers involved in Ms X's case. The tribunal considered looking at the posts the respondent was entitled to raise with the claimant its concerns, and that in the circumstance those concerns were genuine and were well-founded.

130.The claimant said she didn't help white people, only black people and a lot of black people were helped by her posts / blogs/vlogs. Before the tribunal the claimant contended she was not allowed to explain her culture. The tribunal accepted the meeting may have been somewhat intimidating to the claimant in that she was speaking to a senior manager, having only just started work. However she was not a shrinking violet. She had been a trade union activist. She was not slow to express her views before the tribunal, sometimes in trenchant terms.

131.The claimant consider her posts had been taken out of context and said "*you're asking me to kill myself by stopping this work online It's what keeps me going.*" The claimant had not carefully listened to what she had been told (a matter that featured later in the chronology and was also evident before the tribunal).The claimant heard what she wanted to hear. She had not been told she could not engage in any form of social media.

132.The claimant was offered advice about the use of the Internet. She was asked to carefully review her various public vlogs and videos around relationships in case they conflicted with her responsibilities she had as an employee of the respondent,

given the client group she would be working with. She was not told to delete all her presence on social media.

133. Ms Levie was particularly attuned to the dangers of social media as Ms X, and other service users, had previously sought out employees of the respondent and tried to use their online postings to discredit them. The respondent had a significant degree of sensitivity to Ms X's behaviour on social media as she had apparently been warned by the family court judge that some of her postings were in contempt of court.

134. Ms Levie had a twofold concern, one to protect the respondent and its reputation and secondly to protect individual employees who then suffered, in common parlance harassment from third parties.

135. The tribunal accepted that irrespective of claimants claimed protected characteristics or Ms X's nationality or national origins Ms Levie, in the same circumstances, would have approached matters in exactly the same manner as she did with the claimant. Ms Levie did not, as the claimant suggested, target the claimant because she perceived that she was a friend of Ms X, a black Zimbabwean woman.

### **The grievance**

136. On 29 March 2023 10.30 the claimant sent an email to Ms Delaney (203) which she entitled "grievance". She did not attend work. She did not report sick.

137. The email read as follows: –

*Further to our conversation after the informal meeting that was booked, a day after another informal meeting with Becca [Ms Cheesman]. I shared with you, my anxiety and fear it has caused me on this job after breaking down in tears to my new management. I also shared that my start at work has given me an after taste that I regret the other offers I turned down. I strongly feel the pressure that I have subjected to about post on Facebook, a conversation that was taken out of context as it was a result of our Zimbabwean Facebook bullying, which I was speaking against. It was made to my attention by Becca that hated social workers and so my relation to her made me to be targeted at work. Becca asked me how I was related to her as it would make other social workers not to be safe. Regardless of taking the*

*post down, I was told that I should take down my Facebook account. As I wait for the written instruction, my anxiety and stress has heightened that I am worried about working in the team.*

*It was my first day at work and wondering such a procedure without even having done any induction, trainings, signing contract neither access to policies nor even introduced to the Service Manager. I feel so targeted on and bullied at work after being told that "You are not in trouble", when I am subjected to such pain of discrimination trauma it has made me to revisit...(sic)"*

138.Ms Delaney forwarded the e-mail on to Ms Levie and Ms Cheesman.

139.Ms Levie sought advice from HR although that was unknown to the claimant.

140.On 30 March 2023 (204/205) Ms Delaney contacted the claimant (who was working from home that day ) to check that she was completing her induction training and directed her to where certain policies could be located. The policies included the respondent's social media policy.

### **The third meeting, 31 March 2023**

141.A short meeting took place on 31 March 2023 between the claimant, Ms Delaney and Ms Cheesman (the third meeting).

142.The tribunal found that the purpose was to discuss the grievance but before that could be addressed the claimant was asked about her behaviour towards another member of staff which had come to the respondent's notice.

143.The tenor of the meeting deteriorated very rapidly with the claimant being argumentative, angry and upset.

144.The claimant denied she could access the respondent's policies whereupon she was challenged by Mr Delaney, given the link she had been sent to the previous day.

145.The claimant complained she been told to delete her social media account and no one else had. She was reminded again that she had not been told to delete her account. She been told to delete some posts that were in issue or make the account private and to review her general social media

146. Ms Cheesman explained to the claimant the grievance policy and how it could be utilised. The claimant left room, then returned, and said that she was resigning because she couldn't work with Ms Cheesman.

### **The resignation and subsequent events.**

147. On 31 March 2023 10.42 (206) the claimant sent an email to Ms Delaney stating she was resigning with immediate effect. The reason she gave was she considered she had been bullied and targeted (none of which the tribunal found to be true) and been told she should close her social media accounts whereas other people in the office had theirs. She complained that the "*procedural informal meetings*" and intrusions onto her social life were unprofessional and that she felt intimidated by Ms Cheesman.

148. However before the tribunal the claimant gave a different reason for resignation. She said she was told that HR would not speak to her and "*that's the reason I quit my job*".

149. The respondent feared the claimant had acted in haste and therefore wrote to the claimant that same day, 31 March by first class post (274/275). Again the relevant managers had taken advice from HR. The claimant accepted she received the letter on 01 April 2024 and that it contained a copy of the respondent's social media use policy and explained that the purpose of the meetings on the 27 and 28 were to offer management advice as regards the personal use of social media.

150. It suggested a further meeting and also outlined the support available to the claimant during her probationary period should she retract her resignation. The respondent suggested the claimant contacted the respondent prior to 06 April if she did wish to discuss matters further, in default, her resignation would be accepted effective from 07 April 2023.

151. Even after the second and third meetings the claimant still contacted Ms X utilising WhatsApp on 01 and 03 April (277). The email exchange demonstrated that both parties wished to meet.

152. On 05 April 2023 (290/291) the claimant confirmed receipt of the respondent's letter of 31 March but stated she could not attend the meeting on 06 April (this was a misunderstanding of the respondent's correspondence. The respondent had not said



there would be a meeting on 06 April, merely to contact the respondent by that date if she did want a meeting).

153. The claimant asserted she was treated unfairly because of her posts about Ms X. The claimant said she was not aware of the respondent social media policy which was not true.

154. She again complained she was told to close her social media accounts but believed other people had active social media accounts.

155. She alleged she had been made to resign because Ms Cheesman had said that she, the claimant, was making comments that implied herself and Ms Levine were racists

156. She complained she had not been supported or signposted to protect her own mental well-being and that she was denied access to a union or the employee assistance programme. The tribunal found neither of the latter two allegations were true.

157. The claimant said she would return her laptop and take the necessary steps to gain justice.

158. Ms Levie responded on 07 April (294) and suggested a meeting at which the claimant could be accompanied by a trade union representative if she so wished. She finished her communication with the words *“if you don’t wish to meet with me and you still want to resign will accept your resignation with effect from Friday, 14 April 2023.*

159. The claimant responded stating she has suffered a *“mental breakdown”* but asked for the time and venue of the meeting so she could attend.

160. There was no cogent evidence before the tribunal that the claimant had suffered such a severe medical event as a mental breakdown. In the interim on 11 April the claimant sent in a duplicate of the original resignation letter (266/267).

161. The claimant then informed the respondent that her trade union official was ill and she herself sent in a fit note for the period 11 to 18 April.

162. For reasons wholly unconnected with this claim, on 11 April 2023., Ms Cheesman left the employment of the respondent to work at a neighbouring local authority on a permanent contract.

**Meeting of 19 April, the fourth meeting.**

163.A meeting was held on 19 April ( the fourth meeting).

164.The claimant attended along with her trade union representative. Present for the respondent was Ms Levie and a Ms Ferriday as a note taker. The notes showed the claimants trade union representative was an active participant in the meeting.

165.Notes were prepared and whilst not verbatim the tribunal accepted they were reasonable summary of the principal matters discussed (316/319).

166.The social media posts were produced. For the avoidance of doubt these were the Facebook posts together with various extracts from blogs and articles already referred to . The tribunal was not satisfied that a tract from the Bible (447) was produced. It was not satisfied the respondent ever saw that document prior to the institution of these proceedings.

167.Ms Levie went through the social media posts with the claimant.

168.Ms Levie repeated again how some of the claimant's extensive presence on Facebook, tick-tock, Instagram and Twitter expressed matters that were inconsistent with the respondent's values. The concerns were not limited simply to her posts in connection with Ms X and Facebook.

169.Ms Levie repeated the danger of having a public social media presence, and in particular where service users had accessed the accounts of some of the respondent's employees and sought to use them, taken out of context, against them. An example was given involving Ms X where she'd obtained the picture of one of the respondent social workers, taken when she was a student, on her Facebook account showing her drinking wine. Although there was a privacy setting on the employees account Ms X had entered via the social workers sister's account. Ms X had used the picture to make representations to various professional bodies alleging the social worker was alcoholic.

170.Other examples were given where information had been taken out of context by service users and sent to a judge and an MP.

171.The trade union official asked whether the claimant could rescind her resignation.

172. A short adjournment took place so the claimant could discuss matters with her trade union official, in private. Following the adjournment the claimant's trade union official indicated the claimant wished to rescind her resignation. The claimant said she would stop posting and do what was asked and the respondent understood the grievance had been withdrawn. This interpretation is consistent with the email from Ms Levie sent on 20 April (331) and was a reliable contemporaneous document.

173. On 20 April (11.51) Ms Levie contacted the claimant (302/303) because the claimant's personal Facebook profile was still publicly visible together with Molly's talk. In addition there remained a significant presence on Instagram, TikTok and Twitter under her own name. Ms Levie asked for an assurance that all of these sites would be reviewed by the claimant and anything that contradicted the respondent's core values or created a conflict was either closed down or deleted.

174. The claimant responded on 20 April (302) and stated the respondent's social media policy contained no such prohibition. The claimant said she was resigning and her email should be treated as a resignation. She also referred in the letter to her grievance.

175. Ms Levie responded (301) and indicated that the claimant's resignation was accepted.

176. Ms Levie said she had understood that the claimant did not wish to formally progress her grievance because at the meeting on 19 April her trade official had said they were "*drawing a line under things are moving forward with a fresh start*". Thus Ms Levie considered the grievance had been retracted. However she advised the claimant that if she wished to proceed with it she would need to discuss this further with her trade union representative.

177. The claimant did not thereafter submit or resubmit a formal grievance or seek to reactivate the existing one.

178. For completeness the tribunal should record that not a shred of evidence was adduced by the claimant to demonstrate that a person in a comparable situation to the claimant's would not have been dealt with in identical way to the manner in which the claimant was dealt with by the respondent.

179. In addition the tribunal found that the identified protected characteristics played no part either consciously or subconsciously in any of the decisions taken by the respondent's witnesses.

## **Submissions.**

### **The claimant**

180. Before the tribunal heard submissions it adjourned overnight so both parties could gather their thoughts and recommended to the claimant that she tailored her closing remarks to the identified complaints in the list of issues.

181. However the claimant decided not to follow that suggestion and submitted a written submission which had virtually no relevance to the agreed issues.

182. In a final effort to assist the claimant, having regard to the overriding objective, the tribunal took her through each of the 10 complaints and asked for her comments. The tribunal should mention that in those submissions the claimant relied upon the protected characteristic of her race.

183. In summary she said as follows: –

- Complaint 1. She was ambushed and should have been given copies of the posts before the meeting.
- Complaint 2 .She was not afforded trade union representation and this was because she was a black person.
- Complaint 3. She did not have access to the relevant policies.
- Complaint 4. Her post did not contravene the respondents' social media policy and she was targeted because she was a black woman.
- Complaint 5. She was discriminated against because the respondent failed to have regard to her own culture.
- Complaint 6. It was only her who was asked to, she said, delete all her social media presence.
- Complaint 7. She believed that the respondent's white managers ganged up against her and this was all about power and they "*killed me*" because she was a black person.
- Complaint 8. HR was not involved because the claimant was black.

- Complaint 9. She had never seen the grievance procedure and she believed the way it was dealt with was because she was black.
- Complaint 10. All the matters taken together was such that she'd been constructively unfairly dismissed because of her protected characteristics.

### **The respondent.**

184. Ms Clayton relied upon a written submission in which she set out the applicable legal principles, which the tribunal considered fairly summarised the law and then went through each of the claims.

185. The tribunal meant no disrespect to Ms Clayton by not repeating those submissions, given they were already in her submission which was placed on the tribunal file

186. Ms Clayton spent some time on the issue of credibility. She urged the tribunal to find the claimant was not a credible witness. She pointed out the claimant's evasiveness during cross examination and her inability to accept the genuineness of some of the documentation.

187. In contrast she pointed to the reliability, cogency and consistency of the respondent's witnesses who she said were impressive even when subjected to personal attacks in cross examination by the claimant. She accepted that in respect of Ms Cheesman there was an element of contradiction in her witness proof at paragraph 11 when she had indicated she thought the claimant had contravened the respondent social media policy in relation to her pre-employment posts yet before the tribunal accepted that wasn't the case. She urged the tribunal to find that she was an honest but mistaken witness and the difference between her evidence could be explained by the length of time since the incidents took place.

### **Conclusion**

188. The tribunal began by resolving the dispute that existed between the parties as to whether the claimant had established a philosophical belief.

189. The correct approach was set out in **Grainger PLC -v- Nicholson (2010) IRLR**

**4.** The following had to be satisfied:

- the belief had to be genuinely held.

- it had to be a belief and not... an opinion or viewpoint based on the present state of information available.
- it had to be a belief as to a weighty and substantial aspect of human life and behaviour.
- it had to attain a certain level of cogency, seriousness cohesion and importance.
- it had to be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others.

190.The claimant had set out in some detail how she put her philosophy, 134/135.

191.She was not cross-examined upon that evidence.

192.In submissions Ms Gordon asserted that the second and four limbs of **Grainger** were not satisfied.

193.The tribunal accepted that submission in respect of feminism. The claimant had not demonstrated that the way she described her feminism satisfied the test in Grainger. It was an opinion or viewpoint and not a belief and whilst it has some, it did not have a weighty and substantial impact on her behaviour.

194.Conversely, however, the tribunal found that the claimant's Shona culture of Hunhu/ Ubuntu was capable of amounting to a philosophical belief.

195.The tribunal was unable to accept Ms Gordon submissions that points two and four of **Grainger** were not satisfied

196.It was genuinely held.

197.It was practised by the claimant and influenced all aspects of her life. She explained how culturally those who shared her belief would attend the funeral of a person of their culture even if they did not know them and bring various tokens or gifts, which could range from physical gifts to the sharing of knowledge would be given It was this culture which led her to establish a charity to support children in Zimbabwe and that resulted in her reaching out to members of her culture even if she did not know them, if they were in difficulty.

198.What the claimant did went beyond opinion or viewpoint and it had a certain level of cogency seriousness cohesion and importance.

199. Thus the tribunal found the claimant's philosophical belief was a belief in the Hunhu/Ubuntu philosophy.

## **Credibility**

200. Given the issue of credibility was raised, the tribunal should set out its position.

201. It preferred the evidence of the respondent's witnesses for the following reasons: –

- the clear and precise manner in which they gave their evidence.
- the strong correlation between their oral evidence and the contemporaneous documents.
- whilst it was true there was an issue between Ms Cheesman's oral evidence and paragraph 11 of her statement the tribunal found her oral evidence to be more likely to be correct given it supported the evidence of other witnesses. In any event whether or not the claimant's initial posts contravened the respondent's social media policy was not a matter the tribunal had to determine as an agreed issue.
- The claimant, even making allowances for the fact she was a litigant in person and possibly nervous was not an impressive witness. She simply did not listen even when things were explained to her in clear terms, for example how to do a closing submission. She was very prone to generalisations ( everything that she did not like was because she was black and she repeatedly referred to discrimination without laying any cogent evidential foundation) and extravagant talk such as by restricting her use of social media the respondent was "killing" her.

202. Before moving on to the issue of harassment the tribunal reminded itself of the position of the burden of proof in discrimination cases.

## **Burden of proof for discrimination claims**

203. The burden of proof is set out in section 136 of the Equality Act 2010 as follows:-

*(1) This section applies to any proceedings relating to a contravention of this Act.*

*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*[Tribunal emphasis]

*(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”*

204. Thus in a discrimination case it was for the claimant to prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination, see **Royal Mail Group Ltd -v-Efobi 2021 UKSC 33**

205. The tribunal started its deliberations in respect of harassment by setting out the law it had to apply.

### **Harassment**

206. Section 26 of the EQA 2010 defines harassment as follows:

- (1) A person (A) harasses another (B) if –*
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and*
  - (b) the conduct has the purpose or effect of –*
    - (i) violating B's dignity, or*
    - (ii) creating an intimidating, hostile, degrading, humiliating or an offensive environment for B.....*

*(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –*

- (a) the perception of B*
- (b) the other circumstances of the case*
- (c) whether it is reasonable for the conduct to have that effect.*

207. In **Richmond Pharmacology Limited v Dhaliwal 2009 IRLR 366** Underhill P set out three questions to be answered in an harassment claim namely:

- Did the respondent engage in unwanted conduct?



- Did the conduct have either (a) the purpose **or** (b) the effect of either (i) violating the claimant's dignity **or** (ii) creating an offensive environment? [ highlighted words are the tribunal's emphasis]
- Was the conduct related to a relevant protected characteristic?

208.This test was clarified and extended in the case of **Pemberton v Inwood 2008 EWCA Civ 564** where the court added that when considering where the conduct had the prescribed effect the tribunal must take into account the following factors:

*" In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the prescribed effects under sub paragraph (1)(b), a Tribunal must consider both.....whether the putative victim perceives themselves to have suffered the effect in question ( the subjective question) and ....whether it is reasonable for the conduct to be regarded as having that effect ( the objective question). It must also...take into account all the other circumstances-subsection (4)(b). The relevance of the subjective question is that if the Claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the Claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."*

209.The conduct must be related to a protected characteristic. That is a relatively low hurdle; however, it is not enough that the behaviour had an association with the protected characteristic as was shown in **Warby v Wunda Group plc UKEAT/0434/11**.

210.The EHRC code of practice at paragraph 7.9 made it clear that conduct could relate to the claimant's own protected characteristic or the protected characteristic of another person. The tribunal has born that in mind in respect of Ms X.

211.The word "violating" is a strong word which should not be used lightly. Offending against dignity or hurting is insufficient said the EAT said in **Betsi Cadwaladr University Health Board v Hughes UKEAT/0179/1**.

212.The intention of the alleged harasser may be relevant to determine whether the conduct could reasonably be expected to violate a claimant's dignity although the

harasser need not know the behaviour was unwanted so context may be everything, see **Lindsay –v- London School of Economics [2013] EWCA Civ 1650**.

213.To save repetition the tribunal have used the phrase “ the protected characteristics” for those matter identified by Employment Judge Aspden as the claimant’s colour and/or her Zimbabwean nationality or national origins and/or that of Ms X ; and/or the claimant’s religious or other philosophical beliefs about the role or position of women in society.

214.The tribunal explained to the parties that harassment and direct discrimination were mutually exclusive because the kind of conduct that could amount to harassment was usually the kind of conduct that amounted to a detriment for the purposes of bringing a direct discrimination claim. Section 212 EQA 10 made it clear that the concept of detriment did not include conduct that amounts to harassment

215.The net effect of the legislative framework was that a person who claimed they has they had been harassed was obliged to bring a section 26 harassment claim rather than a section 13 direct discrimination although they could be brought in the alternative.

216.It was that this reason the tribunal approach matters by first determining the harassment complaints.

### **1.Did Jo Levie require the claimant to attend a meeting on 28 March 2023 to discuss Facebook posts she had made before her employment began?**

217.It was not disputed that Ms Levie was the decision maker who asked for the claimant to attend a meeting of 28 March to discuss her Facebook posts made in respect of Ms X prior to the commencement of her employment.

218.The respondent had genuine concerns.

219.Ms X had already use social media which had resulted in a contempt of court warning from a family court judge. She had used social media to attack the integrity of a number of employees of the respondent engaged in the care proceedings.

220.A natural reading of the claimant’s posts would reasonably lead the reader to assume the claimant was supportive of Ms X.

221. In the circumstances it was wholly proper and reasonable for the respondent to better understand the situation and to counsel the claimant, as a new employee, of the potential dangers of the use of social media going forward.

222. The claimant has failed to show that the conduct was unwanted. Even if that was the claimant's perception it was not reasonable for the conduct complained of to have that effect when the full facts were looked at in context.

223. She has failed to show the conduct was related to any of the protected characteristics. Even if the claimant was right that her philosophical belief required her to support a person from the Zimbabwean community that will not suffice. There had to be a causal link, and the information the claimant gave was background, see **Unite the Union -v- Nailard [2018] EWCA Civ 1203**.

224. Whilst not determinative, the motivation of Ms Levie had nothing whatsoever to do with the protected characteristics.

225. The purpose of the discussion neither created an intimidating hostile degrading humiliating or offensive environment nor did have that effect. It was the sort of procedure employees and managers engage in up and down the country when an issue has come to light and clarification is required.

226. It follows therefore this allegation of harassment must be dismissed.

## **2. Did Jo Levie require the claimant to attend the meeting on 28 March 2023 without first giving her time to arrange representation?**

227. The claimant was requested to attend a meeting on 28 March. She had no right to trade union representation. The respondent however, when the claimant asked if she would bring a representative, did not refuse. At no stage did the claimant ask for a postponement of the meeting because of difficulties in obtaining representation. She had been a Unison steward. The claimant suggestion that she could not have asked for a postponement because culturally she had to obey a senior manager was unconvincing. The claimant was no shrinking violet and as shown in the course of the events set out below, particularly the meeting of 31 March, and her behaviour before this tribunal, demonstrated she was well able to express herself.

228.The claimant has failed to show that the conduct was unwanted. Even if that was the claimant's perception it was not reasonable for the conduct complained of to have that effect when the full facts were looked at in context.

229.She has failed to show the conduct related to any of any protected characteristics.

230.Whilst not determinative, the motivation of Ms Levie had nothing whatsoever to do with the protected characteristics.

231.It follows therefore this allegation of harassment must be dismissed.

**3.Did Jo Levie require the claimant to attend the meeting on 28 March 2023 without first giving her access to workplace policies and particulars of her employment?**

232.Whilst the tribunal found on the balance of probabilities the claimant had received her statement of particulars of employment it cannot say whether it was before or after the meeting. Nor can it say that the claimant definitely had access to the respondent's workplace policies before the meeting.

233.The respondent did not adduce any evidence as to when the policies being uploaded onto My view, or if already uploaded, any link being sent to the claimant prior to the meeting so she could view those policies.

234.However the statement of particulars was wholly irrelevant to the matter under discussion. The social media policy would have been useful but given at the very start of the meeting it was made clear that she was not subject to any form of disciplinary process and its omission, whilst regrettable, was not unwanted conduct.

235.The claimant has not led any evidence to show that if the tribunal was wrong on that point the unwanted conduct in any way related to her protected characteristics. It rejected entirely that she was targeted because she was black. The respondent knew the claimant was black when they recruited her. The steps the respondent took to try and talk the claimant out of resigning also point away from her being black having any conscious or subconscious influence on the respondent's actions.

236.It cannot be said the respondent's conduct created an intimidating hostile degrading humiliating or offensive environment nor did have that effect.

237. Even if that was the claimant's perception it was not reasonable for the conduct complained of to have that effect.

238. If there was unwanted conduct it was not related to any of the protected characteristics

239. Whilst not determinative, the motivation of Ms Levie had nothing whatsoever to do with the protected characteristics.

240. It follows therefore this allegation of harassment must be dismissed.

**4. At the meeting on 28 March 2023 and/or subsequent meetings that took place on 31 March and 19 April 2023 did the respondent criticise posts the claimant had made on social media?**

241. On the basis of the evidence before the tribunal there was no doubt, and indeed the respondent did not dispute, that it had concerns as regards the claimant's Facebook posts that her general social media presence.

242. However as the tribunal has already explained the respondent had genuine and well-founded concerns.

243. The respondent was entitled to have concerns that some of the claimant social media could lead to the reasonable perception that she was biased against men and this was incompatible with her post as a family worker.

244. The tribunal found that the claimant did not understand the respondent's justifiable concerns and her only concern was herself and her online community.

245. The claimant has not established this was unwanted conduct. It was entirely reasonable conduct by the respondent.

246. If there was unwanted conduct it was not related to any of the protected characteristics.

247. It cannot be said the respondent's conduct created an intimidating hostile degrading humiliating or offensive environment nor did have that effect.

248. Even if that was the claimant's perception it was not reasonable for the conduct complained of to have that effect.

249. It follows therefore this allegation of harassment must be dismissed.

**5. At the meeting on 28 March 2023 and/or subsequent meetings that took place on 31 March and 19 April 2023 did the respondent fail to give the claimant a fair opportunity to respond to those criticisms?**

250. The tribunal had the benefit of reading the notes of the meeting. The tribunal did not find any evidence that the claimant was not afforded a fair opportunity to respond to the claimant's concerns. Her views were noted.

251. On 28 March she explained that the Zimbabwe community wanted the claimant to reach out to Ms X. She explained when she made those posts she wasn't employed by the respondent. She explained about her project, the family arc. She explained how she supported family relationships.

252. On 31 March the meeting was relatively short but the tribunal found that was due to the claimants' behaviour.

253. On 19 April she had a trade union official with her and no criticism was made by that official of the conduct of the meeting. Whilst the claimant contended in cross examination that the trade union official was not representing her, the evidence and the notes showed that she was fully engaged. It was the trade union representative who raised the prospect of the claimant rescinding her resignation and that must have been on the basis of the claimants' instructions particularly having regard to the break that took place during the course of the meeting.

254. In any event even if the tribunal was wrong on that point the respondent was entitled having regard to the circumstances and the involvement of the trade union official to assume that she was the claimant's representative.

255. The claimant's case also shifted as in cross examination she said she was not even allowed to speak at any of the meetings. That was clearly incorrect.

256. The claimant has not established this was unwanted conduct. It was entirely reasonable conduct by the respondent.

257. If there was unwanted conduct it was not related to any of the claimant protected characteristics.

258.It cannot be said the respondent's conduct created an intimidating hostile degrading humiliating or offensive environment nor did have that effect.

259.Even if that was the claimant's perception it was not reasonable for the conduct complained of to have that effect.

260.It follows therefore this allegation of harassment must be dismissed.

**6.Did Ms Levie go onto the claimant's social media without her consent and print off messages the claimant had posted?**

261.The claimant was critical of the respondent looking at her social media activities. The tribunal found it was a matter of happenstance. Ms X had been posting separately on social media. The family court judge had warned her as to her activities. Ms X continue to publish, including matters critical of the respondent and some of its employees. As a result the respondent was monitoring her account and came across the activities of the claimant. It transpired that the manager who had been monitoring Ms X's account was the lead manager on the claimant's recruitment and noticed the claimant's name which was unusual for County Durham ( as an aside this reinforces the respondents concerns as to the claimant post with her full name. Service users could easily link the claimant's role with the respondent with the posts .)

262.She had concerns and therefore raised the matter. The suggestion by the claimant that on the first day at work she was picked upon because she was black, in the tribunal's judgement totally lacked any credibility. There was a shortage of staff to work in social services. All staff were working hard. The respondents had better things to do than simply trawl through social media because the claimant was black.

263.The respondent did not need the claimant's consent. All the information was publicly available on the Internet. Whilst the claimant was now critical of the fact the respondent looked at her social media activity this was the very point the respondents were seeking to make to her that anything she said could be viewed by the world. The claimant cannot complain as to who viewed her social media when did not use any privacy settings. All the respondent did was what any person could have done.

264. Whilst the claimant was right that technically she had not breached the respondent's social media policy in respect of the posts involving Ms X the tribunal was satisfied that the respondent had a genuine concern for both itself and the claimant.

265. The claimant has not established this was unwanted conduct. It was entirely reasonable conduct by the respondent.

266. If there was unwanted conduct it was not related to any of the protected characteristics

267. It cannot be said the respondent's conduct created an intimidating hostile degrading humiliating or offensive environment nor did have that effect.

268. Even if that was the claimant's perception it was not reasonable for the conduct complained of to have that effect.

269. It follows therefore this allegation of harassment must be dismissed.

### **7. Did Ms Levie instruct the claimant to close down her social media at the meeting on 28 March 2023 and by email after that meeting?**

270. There was nothing in the evidence of Ms Levie or from the notes of the meeting which demonstrated the claimant had been told to close down all of her social media. She had agreed to remove the Facebook comments as regards Ms X. She had been asked to utilise private settings and/or remove problematic posts. The respondent at no stage told the claimant that she had to cease all activity of whatever kind on social media.

271. This is consistent with the documentation as was demonstrated in the email from Ms Levie to the claimant on **20 April 2023** 12.52 (302/303). Ms Levie asked for reassurance that her social media presence either be closed down or items on the profiles removed which conflicted with the respondent's values, conduct and behaviours. This was in the context that after all the counselling information was readily apparent by means of a simple google search.

272. The claimant has not established unwanted conduct. It was entirely reasonable conduct by the respondent.



273.If there was unwanted conduct it was not related to any of the protected characteristics

274.It cannot be said the respondent's conduct created an intimidating hostile degrading humiliating or offensive environment nor did have that effect.

275.Even if that was the claimant's perception it was not reasonable for the conduct complained of to have that effect.

276.It follows therefore this allegation of harassment must be dismissed.

### **8.Did the respondent fail to involve HR when the claimant raised a grievance?**

277.The respondent's grievance policy provided that the manager of the employee should initially seek to resolve matters informally. If that was unsuccessful an employee had the opportunity to formalise their grievance by means of a preprinted document. The lodging of that document would then trigger the appointment of an investigating officer. HR had no involvement in an informal stage. HR's only involvement in a formal stage was ensuring a member of staff was allocated to support the investigating officer. As it transpired, but in fairness unknown to the claimant, the respondent's managers were taking advice from HR. Ms Levie sought specific advice from HR as regards the grievance (243/244).

278. The factual basis of the allegation is simply not made out.

279.The claimant has not established this was unwanted conduct. It was entirely reasonable conduct by the respondent.

280.If there was unwanted conduct it was not related to any of the protected characteristics.

281.It cannot be said the respondent's conduct created an intimidating hostile degrading humiliating or offensive environment nor did have that effect.

282.Even if that was the claimant's perception it was not reasonable for the conduct complained of to have that effect.

### **9.Did the claimant's manager turn down her grievance and did the respondent commit a repudiatory breach of the claimant's contract**

**of employment by doing the things referred to in complaints 1 to 9 above?**

283.The claimant has not established the factual basis of this allegation.

284.Whilst the claimant lodged a grievance on 29 March 2024 the respondent believed, on the basis of representations made by the claimants appointed trade union officer, following an adjournment to allow her to discuss matters with the claimant, that the claimant was withdrawing her grievance and she could rescind her resignation. Whilst the words used by the claimant's trade union representative were not expressed with absolute clarity, given the surrounding circumstances the tribunal concluded that the respondent genuinely believed that was the position hence why he took no further steps in respect of the grievance.

285.In any event, even if that was wrong the respondent could not arrange an informal meeting with the claimant's line manager because almost immediately after the meeting the claimant changed her mind as regards returning to work and resigned. The purpose of a grievance was to resolve in work concerns. The employment had ended.

286.However even after the claimant's resignation she was still offered the opportunity of pursuing a grievance and did not.

287.There was no evidence that the claimant's grievance had been turned down.

288.The claimant has not established the alleged unwanted conduct. It was entirely reasonable conduct by the respondent.

289.If there was unwanted conduct it was not related to any of the claimant protected characteristics

290.It cannot be said the respondent's conduct created an intimidating hostile degrading humiliating or offensive environment nor did have that effect.

291.Even if that was the claimant's perception it was not reasonable for the conduct complained of to have that effect.

292.Where an employee resigns in response to an employer's repudiatory conduct which constitutes or includes unlawful harassment, the employees *constructive* dismissal is itself capable of constituting unwanted conduct and, hence, an act of

harassment contrary to section 26 EQA 10, see **Driscoll (née Cobbing) v V&P Global Ltd and anor 2021 IRLR 891**,

293. The task for the tribunal was therefore to consider whether individually or collectively on the basis of those established facts the respondent had committed a fundamental breach of contract. That required the claimant to show that the respondent had behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent and whether it had reasonable and proper cause for doing so.

294. The test is objective. The feelings of the claimant were not decisive.

295. The tribunal had no hesitation in concluding that no such breach could be established. On the facts the respondent had established (although the burden was not on it) that it had reasonable and proper cause for acting as it did.

296. The claimant resigned because she considered that the respondent's position on social media restricted her freedom of speech. 297. The respondent had reasonable and proper cause for the reasons already outlined why it imposed restrictions. It follows there cannot be a fundamental breach.

298. Given the tribunal has found that none of the allegations of harassment succeeded and they are identical the claimant's complaint of direct discrimination, then those complaints must also fail.

Employment Judge T.R.Smith

Date 07 April 2025

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